



झारखण्ड गजट

असाधारण अंक

झारखण्ड सरकार द्वारा प्रकाशित

संख्या- 384 राँची, मंगलवार, 23 ज्येष्ठ, 1938 (श०)
13 जून, 2017 (ई०)

मंत्रिमंडल (निर्वाचन) विभाग

अधिसूचना
13 जून, 2017

संख्या-02-निर्वा०न्या०वा०-17-12/2017/06-- भारत निर्वाचन आयोग की अधिसूचना संख्या-82/EP/(01/2010)/TERR/ES-I/JH-LA/2017 दिनांक 8 मई, 2017 द्वारा निर्वाचन अर्जी सं०-01/2010 में दिए गए उच्च न्यायालय, झारखंड, राँची की तारीख 22 जुलाई, 2016 के आदेश से संबंधित अधिसूचना को राजकीय गजट के असाधारण अंक में प्रकाशनार्थ ।

झारखण्ड राज्यपाल के आदेश से,

एल० खियांगते,
मुख्य निर्वाचन पदाधिकारी-सह-प्रधान सचिव ।

भारत निर्वाचन आयोग-----
अधिसूचना

8 मई, 2017/15 वैशाख, 1939 (शक)

संख्या 82/EP/(01/2010)/TERR/ES-I/JH-LA/2017 - लोक प्रतिनिधित्व अधिनियम 1951 (1951 की 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं० 01/2010 में दिये गये उच्च न्यायालय, झारखंड, रांची की तारीख 22 जुलाई, 2016 के आदेश को प्रकाशित करता है ।

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Election Petition No. 01 of 2010

Dr. Barnabas Hembrom, son of Late Victor Hembrom, resident of Mohalla –
Gandhi Nagar, Sisai Road, P.O., P.S. & District-GumlaPetitioner

Versus

1. Kamlesh Oraon, S/o Late Ropna Oraon, resident of Village – Jawahar Nagar,
D.S.P. Road, Gumla, P.O., P.S. & District – Gumla

2. The Returning Officer, Gumla, Gumla Constituency, 68, (Schedule Tribe),
Vidhan Sabha Constituency, Gumla, P.O., P.S. & District- GumlaOpposite Parties

CORAM: HON'BLE MR. JUSTICE D.N. UPADHYAY

For the Petitioner : Mr. Manoj Tandon, Advocate

For O.P. No.1 : Mr. Arvind Kumar Lall, Advocate

For O.P. No.2 : Mr. H.K. Mehta, Advocate

C.A.V. on 16th July, 2015**Pronounced on : 22nd July, 2016**

JUDGMENT

D.N. Upadhyay, J. Petitioner has filed present Election Petition seeking indulgence of this Court to declare the election of opposite party no.1, the returned candidate of 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla to be void in view of the provision enshrined under Section 100 (1) (c) of The Representation of the People Act, 1951 on the ground that nomination of the petitioner was improperly rejected by opposite party no.2 i.e. the Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla.

2. The facts behind filing of this Election Petition are as follow:-

By notification no.1378 dated 18 September, 2007 the petitioner was appointed as a Member (Social Worker), Juvenile Justice Board, Gumla by the Government of Jharkhand. That the Election Commission of India by notification no.598 dated 17 November, 2009 notified the 4th phase of Jharkhand Vidhan Sabha Election, 2009 which includes 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla. The petitioner, being eligible in all respects to be as a candidate by registered un-recognized political party known as Jharkhand Party, filed nomination paper in four sets before the Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla on 23 November, 2009 within the time prescribed by the Returning Officer in terms of the provisions enshrined under Section 33 of The Representation of the People Act, 1951. The scrutiny of nomination paper was held on 25 November, 2009 as per the date fixed by the Returning Officer and the respective candidates/representatives/agents were present before the Returning Officer, Gumla. Sri Joy Fredrik Baxla, a candidate set up by Indian National Congress filed a written complaint on 25 November, 2009 before the Returning Officer, Gumla contending that the petitioner was a Member of Juvenile Justice Board, Gumla and as such he was holding an office of profit and hence, his being a candidate in the election is illegal. The complaint so filed by Sri Joy Fredrik Baxla was registered as Election Complaint Case No.01 of 2009. To meet out the objection raised, the petitioner produced his resignation letter dated 20 November, 2009 addressed to the Principal Magistrate and the Judge-in-Charge, Civil Court, Gumla but the Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla, by order dated 26 November, 2009 rejected the nomination paper of the petitioner on the ground that the petitioner, being a

Member of Juvenile Justice Board, Gumla was holding an office of profit which would be evident from order dated 25 November, 2009 and 26 November, 2009 passed in Election Complaint Case No.01 of 2009. It is disclosed that the petitioner has challenged said order of rejection of his nomination by filing writ application being W.P.(C) No.5568 of 2009 but it stood dismissed on 3 December, 2009 by this Hon'ble Court with liberty to the petitioner to file Election Petition in view of the provision enshrined in Article 329 of the Constitution of India. The election of 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla was held on 12 December, 2009 and the result was declared on 23 December, 2009 and opposite party no.1 was declared as returned candidate. In the present case, nomination paper of the petitioner was rejected in view of purported exercise of power by the Returning Officer, as per the provision enshrined under Article 191 of the Constitution of India and he was disqualified by the concerned Returning Officer on the ground that he was holding an office of profit at that point of time and the resignation tendered by him was not accepted by the competent authority. Therefore, whole case rests on the point as to whether the petitioner being a member of Juvenile Justice Board, Gumla as social worker in terms of Rule 3(1) of Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003 was holding the office of profit or not. Rule 3(1) of the said 2003 Rules reads thus:-

"3. Juvenile Justice Board:

(1) The Board shall consist of a Judicial Magistrate of the first class and two social workers of whom at least one shall be a woman, forming a bench."

3. It is contended that Jharkhand Assembly (Removal of Disqualification) Act, 2006, Clause/entry 11 of the Schedule of this Jharkhand Assembly (Removal of Disqualification) Act, 2006 is pari materia with entry/clause 5 of the Schedule of Bihar Legislature (Removal of Disqualification) Act, 1950. Entry 11 of the Schedule of this Jharkhand Assembly (Removal of Disqualification) Act, 2006 reads as follows:-

"11. The offices of the Chairman or member of any Committee or body appointed by the central or a State Government or by a servant to the Government; provided that the Chairman or any member of such Committee or body does not receive any remuneration other than compensatory allowance.

Explanation (i) For the purpose of this item “compensatory allowances” shall mean-

(a) The travelling allowance, daily allowance, or any allowance in the shape of honorarium, which may be paid to the holder of the office for purpose of reimbursing the personal expenditure incurred by him in attending the meetings of the committee or body or performing any other functions as the holder of the said office; and

(b) The allotment of quarter and the provision for conveyance, and such other facilities, privileges and amenities to the holder of the officer or cash payment in lieu thereof as the State Government, the Board or the managing authority of the committee or the body, as the case may be, may, by order made in this behalf, on such terms and conditions as may be mentioned therein, from time to time, determine.”

4. It is further pointed out that the petitioner was getting only compensatory allowance in each sitting of the Juvenile Justice Board by way of travelling allowance, daily allowance or in the shape of honorarium for the purpose of reimbursing the personal expenditure incurred by him only to attend the meeting of Juvenile Justice Board. The Returning Officer, Gumla has wrongly treated the petitioner that he has been holding the office of profit and the decision taken by him is totally arbitrary, illegal and in colourable exercise of the power of the Returning Officer, Gumla and therefore, the order dated 26 November, 2009 is neither sustainable in law nor on facts and petitioner has prayed for following reliefs:-

(i) To declare the election of respondent no.1, returned candidate from 68 (ST) Gumla constituency as void on the ground as mentioned in section 100 (1) (c) of The Representation of People Act, 1951.

(ii) Cost of this election petition.

(iii) To grant all such other and further relief(s) for which the petitioner is found to be entitled in the facts of this case.

5. On being noticed, opposite party no.1 the returned candidate and opposite party no.2 the Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla have appeared and filed their respective written statement. Opposite party no.1 has contended that election petition filed by the petitioner is neither

tenable nor sustainable and the same is liable to be dismissed. He has denied the allegation parawise and finally submitted that no relief could be granted to the petitioner under Section 100 (1) (c) of The Representation of the People Act, 1951.

6. The Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla has contended that present petition is not maintainable in view of order VI Rule 15 of the Code of Civil Procedure. There is no valid cause of action and the proceeding is not maintainable under Section 100 (1) (c) of The Representation of the People Act, 1951. It is specifically contended that the petitioner was not eligible for nomination to contest the election because he was then discharging his obligation as one of the Member of the Juvenile Justice Board, Gumla and he was holding a post of profit. He had not tendered his resignation before the competent authority and no document was produced to show that his resignation was validly accepted. The complaint filed by Sri Joy Fredrik Baxla was registered as Election Complaint Case No.01 of 2009 and after granting hearing to the parties including the petitioner and after exercising the powers conferred under the provisions of The Representation of the People Act, 1951, nomination of the petitioner was rejected.

7. On the basis of pleadings of the parties following issues were framed:-

1. Whether the election of respondent No.1 from 68 (ST) Gumla Constituency is void in view of the provisions enshrined under Section 100 (1) (c) of the Representation of People Act, 1951?

2. Whether the Member of the Juvenile Justice Board can be held to be office of profit in view of the fact that the petitioner was a Social Worker in terms of Rule (31) of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003?

3. Whether the nomination of the petitioner was wrongly rejected by Returning Officer 68 (ST) Constituency and such rejection is contrary to the provision enshrined in Section 36(2) of the Representation of People Act, 1951 read with Article 191 of the Constitution of India?

4. Whether the decision of the Returning Officer rejecting the nomination of the petitioner is contrary to the provisions enshrined in Jharkhand Assembly (Removal of Disqualification) Act, 2006 in view of the fact that the petitioner only gets

compensatory allowances in each sitting of Juvenile Justice Board by way of travelling allowance, daily allowances or in the shape of honorarium for the purpose of reimbursing the personal expenditure incurred by the petitioner in attending the meeting of the Juvenile Justice Board?

5. Whether the cause of action survives in the instant Election Petition and it is maintainable or not?

8. The petitioner as well as the opposite party no.1 have adduced evidence in support of their claim and contention. The petitioner has adduced his evidence by filing affidavit whereas opposite party no.1 has examined altogether ten witnesses in support of his contention.

9. Since issue nos.2, 3 and 4, some how or the order, are co-related, the same are taken together for discussion and findings. I do not think that oral evidence adduced by the parties are required to be dealt with for deciding these three issues which are of technical in nature. Jharkhand Assembly (Removal of Disqualification) Act, 2006, Clause/entry 11 and explanation given are very clear that “compensatory allowance” shall mean :-

(a) The travelling allowance, daily allowance, or any allowance in the shape of honorarium, which may be paid to the holder of the office for purpose of reimbursing the personal expenditure incurred by him in attending the meetings of the committee or body or performing any other functions as the holder of the said office;

The petitioner was selected as one of the Member of Juvenile Justice Board, District-Gumla vide notification no.1378 dated 18 September, 2007 under Section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Rule 3 of The Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003. SubRule 11 of Rule 3 of speaks about honorarium to be paid to a Social Worker, Member of the Board and that reads as follows:-

“The social worker members of the Board shall be paid such travelling or meeting allowance or honorarium, as the State Government may, decide from time to time.”

The nomination of the petitioner for being a candidate for 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla was rejected by opposite party no.2, the Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency,

Gumla, P.O., P.S. & District-Gumla on the ground that the petitioner at the time of his nomination was holding an office of profit.

10. On perusal of facts and evidence available on record it reveal that the petitioner was given opportunity to meet out the objection raised by Sri Joy Fredrik Baxla for which Election Complaint Case No.01 of 2009 was registered. It is evident that the petitioner, instead of challenging that being a Member of Juvenile Justice Board, District-Gumla, he was not holding an office of profit, presented the copy of resignation tendered by him dated 20 November, 2009 before the Principal Magistrate, Juvenile Justice Board, District-Gumla and the Judge-in-Charge, Civil Court, Gumla. Admittedly, the appointment of petitioner as Member, Juvenile Justice Board was made by State Government vide notification no.1378 dated 18 September, 2007. Therefore, it is apparent that the resignation so tendered was neither presented nor accepted by a competent authority. Since petitioner did not refer entry-11, an explanation indicated under Jharkhand Assembly (Removal of Disqualification) Act, 2006 before the Returning Officer at the time of hearing of Election Complaint Case No.01 of 2009, that point was not considered and the Returning Officer i.e. opposite party no.2 considered the validity of resignation tendered by the petitioner and passed the impugned order dated 26 November, 2009 in Election Complaint Case No.01 of 2009.

11. In view of the discussions made above, issue no.2 is decided in favour of the petitioner because being a member of Juvenile Justice Board, Gumla he was not holding an office of profit. So far issue nos.3 and 4 are concerned, the provision contained in entry-11 of Jharkhand Assembly (Removal of Disqualification) Act, 2006 was not placed before the Returning Officer at the time of hearing of Election Complaint Case No.01 of 2009. The petitioner has not specifically pleaded or adduced any evidence that being the Member of Juvenile Justice Board, Gumla he was not holding a post of profit. Therefore, the Returning Officer considered only point whether the resignation tendered by the petitioner was in accordance with law or not. Since tendering of resignation by the petitioner from the membership of Juvenile Justice Board, Gumla was not in accordance with law, the Returning Officer has rejected the nomination of the petitioner. With these observations, issue nos.3 and 4 are disposed of.

12. Issue nos.1 and 5:Petitioner has filed present election petition for seeking relief under Section 100 (1) (c) of The Representation of the People Act, 1951 by submitting that his

nomination has been improperly rejected but he has not raised allegation of corrupt practice against respondent no.1 rather specific pleading of the petitioner is that the Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla has improperly rejected his nomination. From the pleadings and evidence available on record, this Court is of the opinion that the returned candidate has not committed any corrupt practice against rejection of nomination of petitioner and he is not guilty in any manner against said rejection of nomination of petitioner. The election of returned candidate cannot be declared void, as indicated in sub-section 2 of Section 100. Besides the above, during pendency of this election petition, further assembly election has already been held after completion of statutory period and this election petition has now practically become infructuous. Reiterating the fact and the provision of law, as contained under Section 100 (1) & (2) of The Representation of the People Act, 1951 that the petitioner has not raised allegation of any corrupt practice adopted by the returned candidate and the rejection of nomination paper was done by the Returning Officer because of incomplete pleadings placed by the petitioner, I do not find that the petitioner is entitled for any relief as sought for in the present election petition. Accordingly, this election petition stands disposed of.

(D. N. Upadhyay, J.)

Jharkhand High Court, Ranchi

Dated : 22.7.2016

NKC/N.A.F.R.

आदेश से,

केदार नाथ भार,

सचिव,

भारत निर्वाचन आयोग ।

ELECTION COMMISSION OF INDIA**NOTIFICATION****29th May, 2017/8 Jyaistha, 1939 (Saka)**

No. 82EP/(01/2010)/TERR/ES-I/JH-LA/2017 - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby published Order dated 22nd July, 2016 of the High Court of Jharkhand, Ranchi in Election Petition No. 01 of 2010.

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Election Petition No. 01 of 2010

Dr. Barnabas Hembrom, son of Late Victor Hembrom, resident of Mohalla –
Gandhi Nagar, Sisai Road, P.O., P.S. & District-GumlaPetitioner

Versus

1. Kamlesh Oraon, S/o Late Ropna Oraon, resident of Village – Jawahar Nagar,
D.S.P. Road, Gumla, P.O., P.S. & District – Gumla

2. The Returning Officer, Gumla, Gumla Constituency, 68, (Schedule Tribe),
Vidhan Sabha Constituency, Gumla, P.O., P.S. & District- GumlaOpposite Parties

- - - -

CORAM: HON'BLE MR. JUSTICE D.N. UPADHYAY

- - - -

For the Petitioner : Mr. Manoj Tandon, Advocate

For O.P. No.1 : Mr. Arvind Kumar Lall, Advocate

For O.P. No.2 : Mr. H.K. Mehta, Advocate

- - - -

C.A.V. on 16th July, 2015**Pronounced on : 22nd July, 2016**

JUDGMENT

D.N. Upadhyay, J. Petitioner has filed present Election Petition seeking indulgence of this Court to declare the election of opposite party no.1, the returned candidate of 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla to be void in view of the provision enshrined under Section 100 (1) (c) of The Representation of the People Act, 1951 on the ground that nomination of the petitioner was improperly rejected by opposite party no.2 i.e. the Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla.

2. The facts behind filing of this Election Petition are as follow:-

By notification no.1378 dated 18 September, 2007 the petitioner was appointed as a Member (Social Worker), Juvenile Justice Board, Gumla by the Government of Jharkhand. That the Election Commission of India by notification no.598 dated 17 November, 2009 notified the 4th phase of Jharkhand Vidhan Sabha Election, 2009 which includes 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla. The petitioner, being eligible in all respects to be as a candidate by registered un-recognized political party known as Jharkhand Party, filed nomination paper in four sets before the Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla on 23 November, 2009 within the time prescribed by the Returning Officer in terms of the provisions enshrined under Section 33 of The Representation of the People Act, 1951. The scrutiny of nomination paper was held on 25 November, 2009 as per the date fixed by the Returning Officer and the respective candidates/representatives/agents were present before the Returning Officer, Gumla. Sri Joy Fredrik Baxla, a candidate set up by Indian National Congress filed a written complaint on 25 November, 2009 before the Returning Officer, Gumla contending that the petitioner was a Member of Juvenile Justice Board, Gumla and as such he was holding an office of profit and hence, his being a candidate in the election is illegal. The complaint so filed by Sri Joy Fredrik Baxla was registered as Election Complaint Case No.01 of 2009. To meet out the objection raised, the petitioner produced his resignation letter dated 20 November, 2009 addressed to the Principal Magistrate and the Judge-in-Charge, Civil Court, Gumla but the Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla, by order dated 26 November, 2009 rejected the nomination paper of the petitioner on the ground that the petitioner, being a

Member of Juvenile Justice Board, Gumla was holding an office of profit which would be evident from order dated 25 November, 2009 and 26 November, 2009 passed in Election Complaint Case No.01 of 2009. It is disclosed that the petitioner has challenged said order of rejection of his nomination by filing writ application being W.P.(C) No.5568 of 2009 but it stood dismissed on 3 December, 2009 by this Hon'ble Court with liberty to the petitioner to file Election Petition in view of the provision enshrined in Article 329 of the Constitution of India. The election of 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla was held on 12 December, 2009 and the result was declared on 23 December, 2009 and opposite party no.1 was declared as returned candidate. In the present case, nomination paper of the petitioner was rejected in view of purported exercise of power by the Returning Officer, as per the provision enshrined under Article 191 of the Constitution of India and he was disqualified by the concerned Returning Officer on the ground that he was holding an office of profit at that point of time and the resignation tendered by him was not accepted by the competent authority. Therefore, whole case rests on the point as to whether the petitioner being a member of Juvenile Justice Board, Gumla as social worker in terms of Rule 3(1) of Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003 was holding the office of profit or not. Rule 3(1) of the said 2003 Rules reads thus:-

"3. Juvenile Justice Board:

(1) The Board shall consist of a Judicial Magistrate of the first class and two social workers of whom at least one shall be a woman, forming a bench."

3. It is contended that Jharkhand Assembly (Removal of Disqualification) Act, 2006, Clause/entry 11 of the Schedule of this Jharkhand Assembly (Removal of Disqualification) Act, 2006 is pari materia with entry/clause 5 of the Schedule of Bihar Legislature (Removal of Disqualification) Act, 1950. Entry 11 of the Schedule of this Jharkhand Assembly (Removal of Disqualification) Act, 2006 reads as follows:-

"11. The offices of the Chairman or member of any Committee or body appointed by the central or a State Government or by a servant to the Government; provided that the Chairman or any member of such Committee or body does not receive any remuneration other than compensatory allowance.

Explanation (i) For the purpose of this item “compensatory allowances” shall mean-

(a) The travelling allowance, daily allowance, or any allowance in the shape of honorarium, which may be paid to the holder of the office for purpose of reimbursing the personal expenditure incurred by him in attending the meetings of the committee or body or performing any other functions as the holder of the said office; and

(b) The allotment of quarter and the provision for conveyance, and such other facilities, privileges and amenities to the holder of the officer or cash payment in lieu thereof as the State Government, the Board or the managing authority of the committee or the body, as the case may be, may, by order made in this behalf, on such terms and conditions as may be mentioned therein, from time to time, determine.”

4. It is further pointed out that the petitioner was getting only compensatory allowance in each sitting of the Juvenile Justice Board by way of travelling allowance, daily allowance or in the shape of honorarium for the purpose of reimbursing the personal expenditure incurred by him only to attend the meeting of Juvenile Justice Board. The Returning Officer, Gumla has wrongly treated the petitioner that he has been holding the office of profit and the decision taken by him is totally arbitrary, illegal and in colourable exercise of the power of the Returning Officer, Gumla and therefore, the order dated 26 November, 2009 is neither sustainable in law nor on facts and petitioner has prayed for following reliefs:-

(i) To declare the election of respondent no.1, returned candidate from 68 (ST) Gumla constituency as void on the ground as mentioned in section 100 (1) (c) of The Representation of People Act, 1951.

(ii) Cost of this election petition.

(iii) To grant all such other and further relief(s) for which the petitioner is found to be entitled in the facts of this case.

5. On being noticed, opposite party no.1 the returned candidate and opposite party no.2 the Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla have appeared and filed their respective written statement. Opposite party no.1 has contended that election petition filed by the petitioner is neither

tenable nor sustainable and the same is liable to be dismissed. He has denied the allegation parawise and finally submitted that no relief could be granted to the petitioner under Section 100 (1) (c) of The Representation of the People Act, 1951.

6. The Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla has contended that present petition is not maintainable in view of order VI Rule 15 of the Code of Civil Procedure. There is no valid cause of action and the proceeding is not maintainable under Section 100 (1) (c) of The Representation of the People Act, 1951. It is specifically contended that the petitioner was not eligible for nomination to contest the election because he was then discharging his obligation as one of the Member of the Juvenile Justice Board, Gumla and he was holding a post of profit. He had not tendered his resignation before the competent authority and no document was produced to show that his resignation was validly accepted. The complaint filed by Sri Joy Fredrik Baxla was registered as Election Complaint Case No.01 of 2009 and after granting hearing to the parties including the petitioner and after exercising the powers conferred under the provisions of The Representation of the People Act, 1951, nomination of the petitioner was rejected.

7. On the basis of pleadings of the parties following issues were framed:-

1. Whether the election of respondent No.1 from 68 (ST) Gumla Constituency is void in view of the provisions enshrined under Section 100 (1) (c) of the Representation of People Act, 1951?

2. Whether the Member of the Juvenile Justice Board can be held to be office of profit in view of the fact that the petitioner was a Social Worker in terms of Rule (31) of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003?

3. Whether the nomination of the petitioner was wrongly rejected by Returning Officer 68 (ST) Constituency and such rejection is contrary to the provision enshrined in Section 36(2) of the Representation of People Act, 1951 read with Article 191 of the Constitution of India?

4. Whether the decision of the Returning Officer rejecting the nomination of the petitioner is contrary to the provisions enshrined in Jharkhand Assembly (Removal of Disqualification) Act, 2006 in view of the fact that the petitioner only gets

compensatory allowances in each sitting of Juvenile Justice Board by way of travelling allowance, daily allowances or in the shape of honorarium for the purpose of reimbursing the personal expenditure incurred by the petitioner in attending the meeting of the Juvenile Justice Board?

5. Whether the cause of action survives in the instant Election Petition and it is maintainable or not?

8. The petitioner as well as the opposite party no.1 have adduced evidence in support of their claim and contention. The petitioner has adduced his evidence by filing affidavit whereas opposite party no.1 has examined altogether ten witnesses in support of his contention.

9. Since issue nos.2, 3 and 4, some how or the order, are co-related, the same are taken together for discussion and findings. I do not think that oral evidence adduced by the parties are required to be dealt with for deciding these three issues which are of technical in nature. Jharkhand Assembly (Removal of Disqualification) Act, 2006, Clause/entry 11 and explanation given are very clear that “compensatory allowance” shall mean :-

(a) The travelling allowance, daily allowance, or any allowance in the shape of honorarium, which may be paid to the holder of the office for purpose of reimbursing the personal expenditure incurred by him in attending the meetings of the committee or body or performing any other functions as the holder of the said office;

The petitioner was selected as one of the Member of Juvenile Justice Board, District-Gumla vide notification no.1378 dated 18 September, 2007 under Section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Rule 3 of The Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003. SubRule 11 of Rule 3 of speaks about honorarium to be paid to a Social Worker, Member of the Board and that reads as follows:-

“The social worker members of the Board shall be paid such travelling or meeting allowance or honorarium, as the State Government may, decide from time to time.”

The nomination of the petitioner for being a candidate for 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla was rejected by opposite party no.2, the Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency,

Gumla, P.O., P.S. & District-Gumla on the ground that the petitioner at the time of his nomination was holding an office of profit.

10. On perusal of facts and evidence available on record it reveal that the petitioner was given opportunity to meet out the objection raised by Sri Joy Fredrik Baxla for which Election Complaint Case No.01 of 2009 was registered. It is evident that the petitioner, instead of challenging that being a Member of Juvenile Justice Board, District-Gumla, he was not holding an office of profit, presented the copy of resignation tendered by him dated 20 November, 2009 before the Principal Magistrate, Juvenile Justice Board, District-Gumla and the Judge-in-Charge, Civil Court, Gumla. Admittedly, the appointment of petitioner as Member, Juvenile Justice Board was made by State Government vide notification no.1378 dated 18 September, 2007. Therefore, it is apparent that the resignation so tendered was neither presented nor accepted by a competent authority. Since petitioner did not refer entry-11, an explanation indicated under Jharkhand Assembly (Removal of Disqualification) Act, 2006 before the Returning Officer at the time of hearing of Election Complaint Case No.01 of 2009, that point was not considered and the Returning Officer i.e. opposite party no.2 considered the validity of resignation tendered by the petitioner and passed the impugned order dated 26 November, 2009 in Election Complaint Case No.01 of 2009.

11. In view of the discussions made above, issue no.2 is decided in favour of the petitioner because being a member of Juvenile Justice Board, Gumla he was not holding an office of profit. So far issue nos.3 and 4 are concerned, the provision contained in entry-11 of Jharkhand Assembly (Removal of Disqualification) Act, 2006 was not placed before the Returning Officer at the time of hearing of Election Complaint Case No.01 of 2009. The petitioner has not specifically pleaded or adduced any evidence that being the Member of Juvenile Justice Board, Gumla he was not holding a post of profit. Therefore, the Returning Officer considered only point whether the resignation tendered by the petitioner was in accordance with law or not. Since tendering of resignation by the petitioner from the membership of Juvenile Justice Board, Gumla was not in accordance with law, the Returning Officer has rejected the nomination of the petitioner. With these observations, issue nos.3 and 4 are disposed of.

12. Issue nos.1 and 5:Petitioner has filed present election petition for seeking relief under Section 100 (1) (c) of The Representation of the People Act, 1951 by submitting that his

nomination has been improperly rejected but he has not raised allegation of corrupt practice against respondent no.1 rather specific pleading of the petitioner is that the Returning Officer, Gumla Constituency, 68, (Schedule Tribe), Vidhan Sabha Constituency, Gumla, P.O., P.S. & District-Gumla has improperly rejected his nomination. From the pleadings and evidence available on record, this Court is of the opinion that the returned candidate has not committed any corrupt practice against rejection of nomination of petitioner and he is not guilty in any manner against said rejection of nomination of petitioner. The election of returned candidate cannot be declared void, as indicated in sub-section 2 of Section 100. Besides the above, during pendency of this election petition, further assembly election has already been held after completion of statutory period and this election petition has now practically become infructuous. Reiterating the fact and the provision of law, as contained under Section 100 (1) & (2) of The Representation of the People Act, 1951 that the petitioner has not raised allegation of any corrupt practice adopted by the returned candidate and the rejection of nomination paper was done by the Returning Officer because of incomplete pleadings placed by the petitioner, I do not find that the petitioner is entitled for any relief as sought for in the present election petition. Accordingly, this election petition stands disposed of.

(D. N. Upadhyay, J.)

Jharkhand High Court, Ranchi

Dated : 22.7.2016

NKC/N.A.F.R.

By order,

KEDAR NATH BHAR,
SECRETARY
ELECTION COMMISSION OF INDIA.
